

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE MOHAMED ANWAR

WRIT PETITION NO.34280/1995

Parvathi Chowgle
w/o.M.K.Chowgle,
Major,
Hindu,
Donimalah,
Saundur Taluk,
Bellary District.

PETITIONER

(By Sri Basavaraj Karedy, Adv.,)

-vs-

1. The Deputy Commissioner, Bellary.
2. The Asst.Commissioner, Sub-Division,
Bellary.
3. Harijana Hulugappa
4. Mayappa
5. Durugappa
6. Dharamappa
7. Gangappa
8. Thayamma

Respondents 3 to 8 are all Majors,
residents of Kurekappa Village,
Taluk, Sandur,
Dist: Bellary.

RESPONDENTS

(By Sri M.Siddagangaia,GA for R1&2)

This writ petition filed praying to quash
the order of R1 dated 14.8.95 vide Annexure 'B' and
the order of R2 dated 4.5.94 vide Annexure 'A'.

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This petition coming on for hearing this day, the Court made the following :-

ORDER

Heard.

2. Indisputably, different lands in question were granted to the grantees belonging to scheduled castes and scheduled tribes in the year 1968 with a prohibition clause that they shall not be alienated within a period of 15 years. The said lands are purchased by the petitioner under different sale deeds in the year 1990. Thereafter, Respondent No.2-Assistant Commissioner suo moto initiated action against petitioner under The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 ('the Act' for short) in case No.A.DIS.REV.PTCL/19/1/92-93 for petitioner's eviction from the said lands and the resumption thereof to the original grantee or to the heirs of the grantee under Section 5-1 (A) of the Act. Accordingly, he held that the lands purchased by the petitioner's in the year 1990 in violation of sub-section(1) of Section 4 of the Act and

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therefore their possession was liable to be restored to the original grantees/Legal heirs. Further, it was observed by the Assistant Commissioner in the impugned order Annexure 'A' dated 4.5.94 that prior to the purchase of the said lands by the petitioner, the grantees the legal heirs had alienated them and created encumbrance with respect thereto in favour of other persons as per the particulars of encumbrance given in Annexure 'A'. Those persons were not parties to the proceedings either before Assistant Commissioner or Deputy Commissioner. Aggrieved by the order of Assistant Commissioner, petitioner challenged the same in appeal before Respondent No.4 Deputy Commissioner who dismissed the appeal by confirming the Assistant Commissioner's order.

3. Indisputably, the said lands were purchased by the petitioner in the year 1990 after expiry of the prohibition period. Therefore, he cannot be sacked with the liability of having contravened the condition prohibiting alienation of the granted land for 15 years. This finding of both the authorities below is clearly erroneous.

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However, sub-section(2) of Section 4 of the Act is clearly attracted to the said sale transaction. Sec.4(2) reads :

"PROHIBITION OF TRANSFER OF GRANTED LANDS:-

(1).....

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3)....."

4. Therefore, it was required of the enquiring authority i.e., the Assistant Commissioner, to make an enquiry whether or not the requisite prior permission of the Government contemplated under the above provision was obtained either by the vendor or the petitioner-vendor to make their transaction valid in law. If the said sale transaction is found to have been made without requisite prior permission of the Government, it becomes null and void. The Assistant Commissioner is required to make an enquiry in this regard and pass fresh order.

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5. For the reasons aforesaid, the impugned orders at Annexure 'A' dated 4.5.94 and Annexure 'B' dated 14.8.95 of both the authorities below are set aside and the matter is remitted to R2 Assistant Commissioner with a direction to hold fresh enquiry and pass fresh order in accordance with law and in the light of the observations made hereinabove.

Sd/-
JUDGE

